

HONORABLE RICARDO S. MARTINEZ

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

VETERANS FOR PEACE GREATER  
SEATTLE CHAPTER 92, *et al.*,

Plaintiffs,

v.

CITY OF SEATTLE, *et al.*,

Defendants.

NO. C09-1032 RSM

WASHINGTON STATE  
DEPARTMENT OF  
TRANSPORTATION'S ANSWER

Defendants Washington State Department of Transportation (WSDOT) and Paula J. Hammond, in answer to the Complaint, admits, denies and alleges as follows:

**I. INTRODUCTION**

1.1. Defendant admits the State owns real property that is managed by WSDOT. Defendant admits that it is illegal for individuals to camp on real property owned by the State and managed by WSDOT. Defendant admits that it does not consent to allow individuals to illegally camp on real property owned by the State and managed by WSDOT. Defendant admits that WSDOT discovers that individuals are illegally camping on real property owned by the State either by inspecting said property or from citizen complaints. Defendant admits that it requires individuals illegally camping on real property owned by that State to vacate said

1 property. Defendant denies that it acts with no regard for human rights and dignity of  
 2 homeless individuals. Defendant is without knowledge or information sufficient to form a  
 3 belief as to the truth of the remaining averments made in Paragraph 1.1, and therefore, denies  
 4 them.

5  
 6 1.2. Defendant admits that it planned to remove individuals illegally camped on  
 7 property owned by the State on July 23, 2009. Defendant denies that the Plaintiffs are entitled  
 8 to the relief requested in Paragraph 1.2. Defendant denies the remaining averments made in  
 9 Paragraph 1.2.

10 1.3. Defendant denies that the Plaintiffs are entitled to relief as requested in  
 11 Paragraph 1.3. Defendants deny the remaining averments made in Paragraph 1.3.  
 12

## 13 II. PARTIES

14 2.1. Defendant is without knowledge or information sufficient to form a belief as to  
 15 the truth of the averments made in Paragraph 2.1, and therefore, denies them.

16 2.2. Defendant is without knowledge or information sufficient to form a belief as to  
 17 the truth of the averments made in Paragraph 2.2, and therefore, denies them.  
 18

19 2.3. Defendant admits the averment set forth in Paragraph 2.3.

20 2.4. Defendant admits that Greg Nickels is the mayor of the City of Seattle.  
 21 Defendant is without knowledge or information sufficient to form a belief as to the truth of the  
 22 remaining averments made in Paragraph 2.4, and therefore, denies them.

23 2.5. Defendant admits the averment in Paragraph 2.5.

24 2.6. Defendant admits that Paula J. Hammond is the Secretary of WSDOT.  
 25 Defendant admits that Secretary Hammond is responsible for implementing and carrying out  
 26

1 WSDOT's programs and policies. Defendant is without knowledge or information sufficient  
 2 to form a belief as to the truth of the remaining averment made in Paragraph 2.6, and therefore,  
 3 denies it.

### 4 5 **III. JURISDICTION AND VENUE**

6 3.1. Defendant is without knowledge or information sufficient to form a belief as to  
 7 the truth of the averments made in Paragraph 3.1, and therefore, denies them.

8 3.2. Defendant admits that this Court has personal jurisdiction over WSDOT and  
 9 Paula J. Hammond.

10 3.3. Defendant admits that venue is appropriate in this District.

11 3.4. Defendant admits that this Court has subject matter jurisdiction over this action.

12 3.5. The averment made in Paragraph 3.5 is a legal conclusion to which no response  
 13 is required.  
 14

### 15 16 **IV. FACTS**

17 4.1. Defendant is without knowledge or information sufficient to form a belief as to  
 18 the truth of the averments made in Paragraph 4.1, and therefore, denies them.

19 4.2. Defendant admits that individuals illegally camp on WSDOT right of way.  
 20 Defendant is without knowledge or information sufficient to form a belief as to the truth of the  
 21 remaining averments made in Paragraph 4.2, and therefore, denies them.

22 4.3. Defendant admits that there are sleeping facilities and other shelters available to  
 23 homeless people in Seattle. Defendant is without knowledge or information sufficient to form  
 24 a belief as to the truth of the remaining averments made in Paragraph 4.3 and (a)-(b), and  
 25 therefore, denies them.  
 26

1           4.4. Defendant admits that individuals, at times, establish illegal encampments on  
2 WSDOT right of way. Defendant denies that the illegal encampments are always placed in  
3 isolated areas. Defendant denies that the illegal encampments are always placed away from  
4 busy public areas. Defendant is without knowledge or information sufficient to form a belief  
5 as to the truth of the remaining averments made in Paragraph 4.4 and (a)-(c), and therefore,  
6 denies them.  
7

8           4.5. Defendant admits that individuals sometimes illegally erect tents or lean-tos on  
9 WSDOT right of way. Defendant is without knowledge or information sufficient to form a  
10 belief as to the truth of the remaining averments made in Paragraph 4.5, and therefore, denies  
11 them.  
12

13           4.6. Defendant is without knowledge or information sufficient to form a belief as to  
14 the truth of the averments made in Paragraph 4.6 and therefore, denies them.

15           4.7. Defendant is without knowledge or information sufficient to form a belief as to  
16 the truth of the averments made in Paragraph 4.7 and (a)-(e), and therefore, denies them.

17           4.8. Defendant is without knowledge or information sufficient to form a belief as to  
18 the truth of the averments made in Paragraph 4.8 and (a)-(f), and therefore, denies them.

19           4.9. Defendant is without knowledge or information sufficient to form a belief as to  
20 the truth of the averments made in Paragraph 4.9 and (a)-(d), and therefore, denies them.  
21

22           4.10. Defendant denies that personal property left on WSDOT right of way is not  
23 abandoned. Defendant is without knowledge or information sufficient to form a belief as to the  
24 truth of the remainder of the averments made in Paragraph 4.10, and therefore, denies them.

25           4.11. Omitted in Complaint.  
26

1           4.12. Defendant is without knowledge or information sufficient to form a belief as to  
2 the truth of the averments made in Paragraph 4.12, and therefore, denies them.

3           4.13. Defendant denies that the illegal encampments are located in isolated areas.  
4 Defendant denies that the illegal encampments are located on property that is less likely to  
5 interfere with other uses and activities that might occur in the location of the property.  
6 Defendant is without knowledge or information sufficient to form a belief as to the truth of the  
7 averments made in Paragraph 4.13 and (a)-(c), and therefore, denies them.  
8

9           4.14. Defendant admits that illegal encampments have been established on property  
10 owned by the City of Seattle.

11           4.15. Defendant admits that individuals have established illegal encampments on  
12 WSDOT right of way.

13           4.16. Defendant admits that WSDOT does not approve of or support the existence of  
14 encampments on WSDOT right of way. Defendant is without knowledge or information  
15 sufficient to form a belief as to the truth of the remaining averment made in Paragraph 4.16,  
16 and therefore denies it.  
17

18           4.17. Defendant admits that in the past, WSDOT has taken steps to ensure that  
19 individuals camping illegally do not continue to occupy WSDOT right of way. Defendant  
20 admits that on September 26, 2008, the City of Seattle took steps to ensure that individuals  
21 camping illegally on property owned by the City vacated said property.  
22

23           4.18. Defendant admits that when it has taken steps to ensure that illegal campers do  
24 not continue to occupy WSDOT right of way, it utilizes WSDOT personnel or others acting at  
25 the request of WSDOT. Defendant is without knowledge or information sufficient to form a  
26

1 belief as to the truth of the remaining averments made in Paragraph 4.18, and therefore, denies  
2 them.

3 4.19. Defendant admits that when it has taken steps in the past to ensure that illegal  
4 campers do not continue to occupy WSDOT right of way, employees, contractors, or other  
5 agents of WSDOT enter the right of way on which the illegal encampment is located.  
6

7 a. Defendant admits that the personal property found at the illegal encampment is  
8 collected and inventoried. Defendant denies that the collection of property is a "seizure" for  
9 purposes of the Fourteenth Amendment of the United States Constitution or Article 1,  
10 Section 7 of the Washington State Constitution. Defendant is without knowledge or  
11 information sufficient to form a belief as to the truth of the remaining averments made in  
12 Paragraph 4.19, and therefore, denies them.  
13

14 b. Defendant denies the averment made in Paragraph 4.19(b).

15 c. Defendant admits the averment made in Paragraph 4.19(c).

16 d. Defendant admits that illegal campers are required to leave WSDOT right of  
17 way.  
18

19 4.20. Defendant denies that prior to April 7, 2008, WSDOT had no written policy or  
20 set of procedures to address illegal encampments. Defendant is without knowledge or  
21 information sufficient to form a belief as to whether WSDOT, prior to April 7, 2008, ever  
22 obtained a warrant or court order prior to requiring illegal campers to move from WSDOT  
23 right of way. Defendant admits that prior to April 7, 2008, there was no administrative or  
24 judicial tribunal or other process by which illegal campers could object to being required to  
25  
26

1 vacate WSDOT right of way. Defendant denies the remaining averments made in  
2 Paragraph 4.20.

3 4.21. Defendant denies the averments made in Paragraph 4.21.

4 4.22. Defendant admits that advocates for the homeless have complained to WSDOT  
5 about the removal of individuals camping illegally from WSDOT right of way. Defendant  
6 denies the remaining averments made in Paragraph 4.22.

7 4.23. Defendant is without knowledge or information sufficient to form a belief as to  
8 the truth of the averments made in Paragraph 4.23, and therefore, denies them.

9 4.24. Defendant is without knowledge or information sufficient to form a belief as to  
10 the truth of the averments made in Paragraph 4.24, and therefore, denies them.

11 4.25. Defendant admits that on December 1, 2008, WSDOT revised General Special  
12 Provision (GSP) 070402.FR1 – Health Hazards. Defendant denies that the provision was  
13 “enacted.” Defendant denies that the provision is an “administrative rule.” Defendant denies  
14 that it ever treated any individual in an unconstitutional or unlawful manner. Defendant is  
15 without knowledge or information sufficient to form a belief as to the truth of the remaining  
16 averments made in Paragraph 4.25, and therefore, denies them.

17 4.26. Defendant denies the averments made in Paragraph 4.26.

18 4.27. Defendant denies the averments made in Paragraph 4.27.

19 4.28. Defendant denies the averments made in Paragraph 4.28.

## 20 **V. GROUNDS FOR INJUNCTIVE RELIEF**

21 5.1. Defendant admits that pursuant to the notice posted at the site of the illegal  
22 encampment located on West Marginal Way SW and 2<sup>nd</sup> Avenue SW in Seattle on July 20,  
23

2009, it intended to clear the area on July 23, 2009. Defendant denies the remaining averments made in Paragraph 5.1.

5.2. Defendant denies the averments made on Paragraph 5.2 and (a)-(d).

5.3. Defendant denies that any individual suffered any compensable loss or injury when WSDOT cleared its right of way on July 23, 2009. Defendant denies the remaining averment made in Paragraph 5.3.

5.4. Defendant denies that WSDOT damaged, destroyed or lost any items of personal property when it cleared its right of way on July 23, 2009. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments made in Paragraph 5.4, and therefore, denies them.

Section 6 Omitted in Complaint

## VII. CAUSES OF ACTION

**7.1. Unreasonable Search & Seizure:** Defendant answers the averments made in Paragraph 7.1 as follows:

a. Defendant admits the averment made in Paragraph 7.1(a).

b. Defendant admits that it has in the past collected, discarded and stored items of property found at the illegal encampments. Defendant denies that the collection of property is a "seizure" for purposes of the Fourteenth Amendment of the United States Constitution or Article 1, Section 7 of the Washington State Constitution. Defendant denies the remaining averments made in Paragraph 7.1(b).

c. Defendant denies the averment made in Paragraph 7.1(c).

d. Defendant denies the averment made in Paragraph 7.1(d).



1       **7.2. Violation of the Constitutional Right to Travel:** Defendant answers the  
 2 averments made in Paragraph 7.2 as follows:

3           a. Defendant denies the averment made in Paragraph 7.2(a).

4       **7.3. Deprivation of Property Without Due Process of Law:** Defendant answers  
 5 the averments made in Paragraph 7.3 as follows:

6           a. Defendant admits the averments made in Paragraph 7.3(a).

7           b. Defendant admits that it has in the past collected, discarded and stored items  
 8 found at illegal encampments located on WSDOT right of way. Defendant denies that the  
 9 collection of property is a “seizure” for purposes of the Fourteenth Amendment of the United  
 10 States Constitution or Article 1, Section 7 of the Washington State Constitution. As the  
 11 Plaintiffs do not have the right to occupy and store personal belongings on WSDOT right of  
 12 way, WSDOT is not required to provide the Plaintiffs notice and an opportunity to be heard  
 13 prior to taking steps to ensure that they do not continue to occupy WSDOT right of way.  
 14 Defendant denies the remaining averments made in Paragraph 7.3(b).

15           c. Defendant admits that it has in the past collected, discarded and stored items  
 16 found at illegal encampments located on WSDOT right of way. Defendant denies that the  
 17 collection of property is a “seizure” for purposes of the Fourteenth Amendment of the United  
 18 States Constitution or Article 1, Section 7 of the Washington State Constitution. As the  
 19 Plaintiffs do not have the right to occupy and store personal belongings on WSDOT right of  
 20 way, WSDOT is not required to provide the Plaintiffs notice and an opportunity to be heard  
 21 prior to taking steps to ensure that they do not continue to occupy WSDOT right of way.  
 22 Defendant denies the remaining averments made in Paragraph 7.3(c).

1           d.       Defendant denies the averments made in Paragraph 7.3(d).

2           e.       As the Plaintiffs do not have the right to occupy and store personal belongings  
3 on WSDOT right of way, WSDOT is not required to afford a tribunal before which Plaintiffs  
4 can contest the removal of their property from WSDOT right of way. Defendant denies that  
5 the removal of property stored on WSDOT right of way is a “seizure” for purposes of the  
6 Fourteenth Amendment of the United States Constitution or Article 1, Section 7 of the  
7 Washington State Constitution. Defendant denies the averments made in Paragraph 7.3(e).

8           f.       Defendant admits that when General Special Provision 070402.FR1 – Health  
9 Hazards is applicable, personal property left at an illegal encampment is removed, placed in  
10 large transparent plastic bags, and stored at a nearby location for return to the property owner.  
11 Defendant further admits that personal property removed from the site of an illegal  
12 encampment is retained for 70 days. As the Plaintiffs do not have the right to occupy and store  
13 personal belongings on WSDOT right of way, WSDOT does not afford the Plaintiffs a tribunal  
14 to contest the removal of their personal property from WSDOT right of way. Defendant denies  
15 the remaining averments made in Paragraph 7.3(f).

16           g.       Defendant denies that individuals who camp illegally on WSDOT right of way  
17 are entitled to an opportunity to contest the removal of their personal property from WSDOT  
18 right of way. Defendant denies that the removal of property from WSDOT right of way is a  
19 “seizure” for purposes of the Fourteenth Amendment of the United States Constitution or  
20 Article 1, Section 7 of the Washington State Constitution. Defendant denies the remaining  
21 averments made in Paragraph 7.3(g).

22           h.       Defendant denies the averments made in Paragraph 7.3(h).

1 i. Defendant denies the averments made in Paragraph 7.3(i).

2 j. Defendant denies the averments made in Paragraph 7.3(j).

3 **7.4. Unlawful Takings Without Just Compensation:** Defendant answers the  
4 averments made in Paragraph 7.4 as follows:

5 a. Defendant admits the averments made in Paragraph 7.4(a).

6 b. Defendant admits that it has in the past collected, discarded and stored items  
7 found at illegal encampments located on WSDOT right of way. Defendant denies the  
8 remaining averments made in Paragraph 7.4(b).

9 c. Defendant is without knowledge or information sufficient to form a belief as to  
10 the truth of the averments made in Paragraph 7.4(c), and therefore, denies them.

11 d. Defendant denies the averments made in Paragraph 7.4(d).

12 e. Defendant denies the averments made in Paragraph 7.4(e).

13 **7.5. Failure to Afford Equal Protection of the Laws:** Defendant answers the  
14 averments made in Paragraph 7.5 as follows:

15 a. Defendant is without knowledge or information sufficient to form a belief as to  
16 the truth of the averments made in Paragraph 7.5(a), and therefore, denies them.

17 b. Defendant is without knowledge or information sufficient to form a belief as to  
18 the truth of the averments made in Paragraph 7.5(b), and therefore, denies them.

19 c. Defendant is without knowledge or information sufficient to form a belief as to  
20 the truth of the averments made in Paragraph 7.5(c), and therefore, denies them.

21 d. Defendant is without knowledge or information sufficient to form a belief as to  
22 the truth of the averments made in Paragraph 7.5(d), and therefore, denies them.

1 e. Defendant is without knowledge or information sufficient to form a belief as to  
2 the truth of the averments made in Paragraph 7.5(e), and therefore, denies them.

3 f. Defendant denies that Plaintiffs' status as homeless persons merit extraordinary  
4 protection. Defendant is without knowledge or information sufficient to form a belief as to the  
5 truth of the averments made in Paragraph 7.5(f), and therefore, denies them.  
6

7 g. Defendant denies that homeless persons constitute a suspect class. Defendant  
8 denies that it violated the constitutional right of the Plaintiffs. Defendant denies the remainder  
9 of the averments made in Paragraph 7.5(g).

10 h. WSDOT admits that it does not permit illegal encampments on WSDOT right  
11 of way because, among other things, the conditions of the encampments may constitute health  
12 and safety violations, the sites are not suitable for habitation, and occupying WSDOT right of  
13 way creates a safety risk to those individuals who so occupy it. Defendant denies the  
14 remaining averments made in Paragraph 7.5(h).  
15

16 i. Defendant denies the averments made in Paragraph 7.5(i) and (i)-(iii).

17 j. Defendant denies the averments made in Paragraph 7.5(j).

18 k. Defendant denies the averments made in Paragraph 7.5(k).

19 l. Defendant denies the averments made in Paragraph 7.5(l).

20 m. Defendant denies the averments made in Paragraph 7.5(m).  
21

22 **7.6. Failure to Reasonably Accommodate Homeless Persons with Disabilities:**

23 Defendant answers the averments made in Paragraph 7.6 as follows:

24 a. Defendant admits the averments made in Paragraph 7.6(a).  
25  
26

1           b. Defendant is without knowledge or information sufficient to form a belief as to  
2 the truth of the averments made in Paragraph 7.6(b), and therefore, denies them.

3           c. Defendant is without knowledge or information sufficient to form a belief as to  
4 the truth of the averments made in Paragraph 7.6(c), and therefore, denies them.

5           d. Defendant is without knowledge or information sufficient to form a belief as to  
6 the truth of the averments made in Paragraph 7.6(d), and therefore, denies them.

7           e. Defendant is without knowledge or information sufficient to form a belief as to  
8 the truth of the averments made in Paragraph 7.6(e), and therefore, denies them.

9           f. Defendant is without knowledge or information sufficient to form a belief as to  
10 the truth of the averments made in Paragraph 7.6(f), and therefore, denies them.

11           g. Defendant is without knowledge or information sufficient to form a belief as to  
12 the truth of the averments made in Paragraph 7.6(g), and therefore, denies them.

13           h. Defendant denies the averments made in Paragraph 7.6(h).

14           i. Defendant denies the averments made in Paragraph 7.6(i).

15           j. Defendant denies the averments made in Paragraph 7.6(j).

16           **7.7. Eighth Amendment Violation:** Defendant answers the averments made in  
17 Paragraph 7.7 as follows:

18           a. Defendant is without knowledge or information sufficient to form a belief as to  
19 the truth of the averments made in Paragraph 7.7(a), and therefore, denies them.

20           b. Defendant is without knowledge or information sufficient to form a belief as to  
21 the truth of the averments made in Paragraph 7.7(b), and therefore, denies them.

1 c. Defendant is without knowledge or information sufficient to form a belief as to  
2 the truth of the averments made in Paragraph 7.7(c), and therefore, denies them.

3 d. Defendant denies the averments made in Paragraph 7.7(d).

4 e. Defendant denies the averments made in Paragraph 7.7(e).

5 7.8. Defendant admits it acts under color of state law. Defendant denies the  
6 remaining averment made in Paragraph 7.8.

7 7.9. Defendant denies the averments made in Paragraph 7.9.

8 7.10. The averment made in Paragraph 7.10 is a legal conclusion to which no  
9 response is required.  
10

### 11 **VIII. RELIEF REQUESTED BY PLAINTIFF**

12 8.1. Defendant denies that Plaintiffs are entitled to an injunction and therefore  
13 denies the averments made in Paragraph 8.1(a)-(h). *See Veterans for Peace Greater Seattle,*  
14 *Chapter 92, et al. v. City of Seattle, et al.*, No. 09-1032 RSM (W.D. Wash. July 24, 2009).  
15

16 8.2. Defendant denies that Plaintiff is entitled to an injunction forbidding any future  
17 “sweeps.”

18 8.3. Defendant denies that Plaintiffs are entitled to any of the types of relief set forth  
19 in Paragraph 8.3(a)-(d).  
20

21 8.4. Defendant denies that Plaintiff is entitled to a jury trial for their claims for  
22 injunctive relief.

### 23 **IX. AFFIRMATIVE DEFENSES**

24 By way of further answer and affirmative defenses, Defendant alleges as follows:  
25

26 9.1. Plaintiffs fail to state a claim for which relief can be granted.

1           9.2. Plaintiffs' lawsuit is a frivolous action under Rule 11 of the Federal Rules of  
2 Civil Procedure as the pleadings are not well grounded in fact, not legally tenable, and  
3 interposed for improper purposes.  
4

5                                   **X. PRAYER FOR RELIEF**

6           1. The Court enter judgment dismissing the Complaint with prejudice and without  
7 awarding Plaintiff any relief.

8           2. For sanctions against Plaintiffs' attorneys, pursuant to Civil 11 of the Federal  
9 Rules of Civil Procedure.

10           3. The award of reasonable attorney fees and costs in favor of Defendants State of  
11 Washington and Paula Hammond against Plaintiff.

12           4. For such further relief as the Court deems just and proper.

13           DATED this 10<sup>th</sup> day of August, 2009.

14  
15                                   ROBERT M. MCKENNA  
16                                   Attorney General

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